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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,105	02/28/2002	Kevin J. Kayser	IGT-1444	2756

7590 07/14/2004

Mark E. Fejer  
Gas Technology Institute  
1700 South Mount Prospect Road  
Des Plaines, IL 60018

EXAMINER

FRONDA, CHRISTIAN L

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/086,105	KAYSER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Christian L Fronda	1652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-32 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

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## DETAILED ACTION

### *Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- Invention 1 Claim(s) 1-5, 15, 16, drawn to a method for making a carotene pigments, classified in class 435, subclass 67.
- Invention 2 Claim(s) 1, 6, 7, 8, 15, 17, 18, 19, 25, 26, drawn to a method for making carotene pigment and a protein of interest using a vector comprising a *Thermus* promoter sequence, classified in class 435, subclass 69.1.
- Invention 3 Claim(s) 1, 6, 7, 9, 15, 17, 20, 25, 27, drawn to a method for making carotene pigment and a protein of interest using a vector comprising a 5' untranslated region, classified in class 435, subclass 69.1.
- Invention 4 Claim(s) 1, 6, 7, 10, 15, 17, 22, 25, 29, drawn to a method for making carotene pigment and a protein of interest using a vector comprising a ribosomal binding site], classified in class 435, subclass 69.1.
- Invention 5 Claim(s) 1, 6, 7, 11, 15, 17, 23, 25, 30, drawn to a method for making carotene pigment and a protein of interest using a vector comprising at least one inducible promoter, classified in class 435, subclass 69.1.
- Invention 6 Claim(s) 1, 6, 7, 12, 15, 17, 21, 25, 28, drawn to a method for making carotene pigment and a protein of interest using a vector comprising at least one multiple cloning site, classified in class 435, subclass 69.1..
- Invention 7 Claim(s) 1, 6, 7, 13, 15, 17, 24, 25, 31, drawn to a method for making carotene pigment and a protein of interest using a vector comprising a *Thermus* transcriptional termination sequence, classified in class 435, subclass 69.1.
- Invention 8 Claim(s) 1, 6, 7, 14, 25, 32, drawn to a method for making carotene pigment and a protein of interest using a vector comprising a *Thermus* transcriptional termination sequence, 5' untranslated region, at least one multiple cloning site, and a ribosomal binding site, classified in class 435, subclass 69.1.

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2. The inventions are distinct, each from the other because of the following reasons:  
Inventions 1-8 are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). The processes of Inventions 1-8 are distinct both physically and functionally; require different process steps, reagents, and parameters; have different purposes; and/or produce different products.

3. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian L Fronda whose telephone number is (571)272-0929. The examiner can normally be reached Monday-Friday between 9:00AM - 5:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura N Achutamurthy can be reached on (571)272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CLF

  
PONNATHAPUACHUTAMURTHY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600